



LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

Docket No. 2018-12

Group Registration of Short Online Literary Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to create a new group registration option for certain types of literary works. To qualify for this option, each work must contain at least 100 but no more than 17,500 words. The works must be created by the same individual, and that individual must be named as the copyright claimant for each work. The works must all be published online within a three-calendar-month period. If these requirements have been met, the applicant may submit up to 50 works with one application and one filing fee. The applicant must complete the online application designated for a “literary work” and upload a digital copy of each work. The Office will examine each work to determine if it contains a sufficient amount of creative authorship, and if the Office registers the claim, the registration will cover each work as a separate work of authorship. The Office invites comment on this proposal.

DATES: Comments must be made in writing and must be received in the U.S.

Copyright Office no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the [regulations.gov](https://www.regulations.gov) system for the submission and posting of public comments in this

proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/rulemaking/shortonline-literaryworks>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights; Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Cindy Paige Abramson, Assistant General Counsel, by telephone at 202–707–8040, or by email at regans@copyright.gov, rkas@copyright.gov, ebertin@copyright.gov, and ciab@copyright.gov.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted the Copyright Act, it authorized the Register to specify by regulation the administrative classes of works for the purpose of seeking a registration and the deposit required for each class. Congress also gave the Register the discretion to allow groups of related works to be registered with one application and one filing fee.¹ This procedure is known as group registration.²

As the legislative history explains, allowing “a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the

¹ See 17 U.S.C. 408(c)(1).

² See generally 37 CFR 202.3(b)(5), 202.4.

law.”³ Congress recognized that requiring separate applications “where related works . . . are published separately” may impose “unnecessary burdens and expenses on authors.”⁴ Congress provided “a group of poems by a single author” as one example of “a group of related works” that would be suitable for group registration.⁵ When large numbers of literary works are included in one submission, however, information about each work may not be adequately captured. Therefore, group registration options require careful balancing of the need for an accurate public record and the need for an efficient method of facilitating the examination of each work.

II. Petition for Rulemaking

This proposed rulemaking stems from a petition submitted in response to an earlier rulemaking. On December 1, 2016 the Office initiated a rulemaking to update the regulation that governs the group registration option for contributions to periodicals (“GRCP”).⁶ In its proposal, the Office explained that GRCP may be used to register works that are first published in a periodical.⁷ For purposes of registration, a “periodical” is defined as a collective work that is published on an established schedule in successive issues that are intended to be continued indefinitely, such as a newspaper, magazine, newsletter, and other similar works.⁸ The Office explained that an electronic publication could be considered a periodical if it is fixed and distributed online or via email as a self-contained work, such as a digital version of a tangible newspaper, magazine, or

³ H.R. Rep. No. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770.

⁴ *Id.*

⁵ *Id.*

⁶ 81 FR 86634 (Dec. 1, 2016).

⁷ *Id.* at 86635.

⁸ *See* 37 CFR 202.4(b)(3).

newsletter.⁹ But works that are first published on a website cannot be registered under GRCP, because websites are typically updated on a continual basis, the updates are not distributed as discrete, self-contained issues, and they do not contain numerical or chronological designations that distinguish one update from the next. As such, websites are not considered “periodicals” for purposes of registration.¹⁰

In responding to the proposed rule for GRCP, the National Writers Union (NWU), the American Society of Journalists and Authors (ASJA), the Science Fiction and Fantasy Writers of America, Inc. (SFWA), and the Horror Writers Association (HWA) (collectively “Petitioners”) jointly submitted a petition for a rulemaking to create a new group registration option to accommodate works distributed online by individual writers, that would not qualify as contributions to periodicals.¹¹

According to the petition, individual writers distribute more of their work “in electronic format on the World Wide Web than in any other format or through any other distribution channel.”¹² Writers routinely create “granular” content that is distributed on websites, blogs, social media platforms, and other internet publications.¹³ They also create and distribute online other “short-form works,” such as poems, short stories, “flash” fiction, short-form ebooks, essays, articles, pamphlets, tracts, and research reports.¹⁴

Petitioners stated that registration is “effectively unavailable” for writers who create “granular or frequently updated works [that are] distributed electronically,

⁹ See 81 FR at 86638-39.

¹⁰ See *id.* at 86639.

¹¹ See NWU et al. Comments and Petition for Rulemaking at 4 (Jan. 30, 2017) (the “Petition”), <https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0013-0003&attachmentNumber=1&contentType=pdf>.

¹² Petition at 10.

¹³ See *id.* at 4, 9.

¹⁴ See *id.* at 11.

including virtually all Web and social media content.”¹⁵ They stated that websites, blogs, and social media platforms are typically updated on a daily basis. To register the works that are distributed on these sites, a writer would need to complete and submit a separate application every day, which would be “prohibitively costly and time-consuming.”¹⁶

To address these issues, the Petitioners asked the Office to create a new group registration procedure for “short-form works” which would allow individual writers to submit one “application and fee every three months.”¹⁷ The Authors Guild, the Association of Garden Communicators (GWA), the Society of Children’s Book Authors and Illustrators (SCBWI), the Songwriters Guild of America (SGA), and the Textbook & Academic Authors Association endorsed this petition.¹⁸ They stated that writers “urgently need a group registration [option] for short pieces, especially those disseminated online,” including “blogs, public Facebook posts . . . , short articles, and even copyrightable tweets.”¹⁹

In response, when closing the rulemaking for the GRCP registration option, the Office stated that it would consider the Petitioners’ requests and “take them into account

¹⁵ *Id.* at 4.

¹⁶ *See id.* at 4, 10.

¹⁷ *Id.* at 13–14. The Petition echoed a similar request which was submitted in a previous rulemaking by the NWU, ASJA, and the Western Writers of America. *See* NWU et al. Comment on Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online at 3–4, 8–10, 17–19 (Aug. 18, 2016), <https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0005-0009&attachmentNumber=1&contentType=pdf>.

¹⁸ Authors Guild et al. Comment at 8–9 (Nov. 17, 2017), <https://www.regulations.gov/contentStreamer?documentId=COLC-2017-0009-0108&attachmentNumber=1&contentType=pdf>.

¹⁹ *See id.* On November 13, 2017 the Petitioners renewed their request and reiterated that it “remains prohibitively costly and time-consuming to register . . . most written work distributed online.” NWU et al. Comment and Renewed Petition for Rulemaking at 4–6 (Nov. 13, 2017), <https://www.regulations.gov/contentStreamer?documentId=COLC-2017-0009-0072&attachmentNumber=1&contentType=pdf>.

when developing its priorities for future upgrades to the electronic registration system.”²⁰ On May 8, 2018 the Office met with representatives from NWU, SFWA, ASJA, and the Authors Guild to discuss the Petition. Following discussions with the Authors Guild, the Office presently understands that the Petitioners would support a rule that provides for the registration of up to 50 literary works per quarter and up to 100 works per year. The Office understands Petitioners’ position is that the rule should apply to articles, short stories, essays, opinion pieces, columns, blog entries, cartoons, Facebook posts, or other literary works that contain at least 50 words and no more than 40,000 words, that are published as part of a website or online platform, but exclusive of advertising copy, computer programs, and emails.

III. The Proposed Rule

After considering the petition for rulemaking, the Office finds there is a legitimate need for a new group registration option for “short online literary works,” to be known as “GRTX.” Under the proposed rule, an applicant will be able to register up to 50 literary works with one application and one filing fee. Each work must contain at least 100 words but no more than 17,500 words. The works must be created by the same individual and that individual must be named as the copyright claimant for each work. The works must be published on a website or online platform within a three-calendar-month period. Each of these requirements is discussed below.

A. Eligibility Requirements

Due to the number of works available in this group registration option, along with the complexity of reviewing copyrightability of short-form works, the Office will strictly

²⁰ 82 FR 29410, 29412 (June 29, 2017).

apply all of the eligibility requirements. To facilitate compliance with the requirements, the Office will provide a checklist in the instructions from the Office, such as in a circular, Compendium update, or webpage. Applicants must be certain to adhere to the requirements

1. Works That May Be Included in the Group

A “literary work” is defined by statute as a work “expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects . . . in which [it is] embodied.”²¹ The Office’s regulations provide representative examples of works that typically fit within this category, such as fiction, nonfiction, poetry, and other types of textual works.²²

To qualify for this group registration option, a work must contain sufficient words. A work comprised mainly of numbers, or other verbal or numerical symbols or indicia, will not qualify under this option. The Office will accept deposit copies that contain text combined with another form of authorship. But claims in any accompanying “artwork,” “photograph,” or any form of authorship other than “text” will not be permitted on the application. Examining and cataloging a work that contains multiple forms of authorship requires a significant amount of time and effort. Given the number of works that may be included in each claim, the Office needs to limit the administrative burden that this option will impose on the Literary Division. Therefore, if an applicant asserts a claim in “text” and another form of authorship, the examiner may remove the unacceptable authorship statement(s) from the application and add an annotation describing the change, or the examiner may simply refuse registration for the group.

²¹ 17 U.S.C. 101.

²² See 37 CFR 202.3(b)(1)(i).

For purposes of registration a “short” online literary work will be defined as a work that contains at least 100 words and no more than 17,500 words. The proposed rule provides representative examples of works that typically fit within this range, such as poems, short stories, articles, essays, columns, blog entries, and social media posts. The 100-word threshold is intended to exclude short phrases and slogans, because they are not eligible for copyright protection, and other short forms of expression that contain less than a paragraph of text.²³ While in some cases these types of works may have enough creativity to warrant registration, in other cases they may contain only a *de minimis* amount of expression. Examining an extremely short work requires careful review and each determination must be made on a case by case basis. It is not feasible to conduct this level of analysis when dozens of works are included within the same claim.

The 17,500-word limit is intended to exclude novels, novellas, or other lengthy works. In drawing the line between “short” and “long” literary works, the Office considered the word counts specified by the prestigious Hugo, Nebula, and Shirley Jackson awards.²⁴ The sponsors of these awards classify a “short story” as a work that contains less than 7,500 words and a “novelette” as a work that contains between 7,500 and 17,500 words. The sponsors define a “novella” as a work that contains between 17,500 and 40,000 words,²⁵ and a “novel” as a work that contains more than 40,000 words.²⁶

²³ 37 CFR 202.1(a).

²⁴ See *Hugo Award Categories*, THE HUGO AWARDS, <http://www.thehugoawards.org/hugo-categories/>; *Nebula Rules*, NEBULA AWARDS: SCIENCE FICTION & FANTASY WRITERS OF AMERICA (Nov. 15, 2018), <https://nebulas.sfwa.org/about-the-nebulas/nebula-rules/>; *Award Rules*, THE SHIRLEY JACKSON AWARDS, <https://www.shirleyjacksonawards.org/rules>.

²⁵ Works of this length include Charles Dickens’s *A Christmas Carol*, Ernest Hemingway’s *The Old Man and the Sea*, and John Steinbeck’s *Of Mice and Men*. See, e.g., *Word Counts and Other*

The Petitioners stated that writers are unable to register granular, frequently updated works that are distributed on websites and social media platforms on a daily basis.²⁷ But they did not provide a compelling reason for creating a similar group registration option for novels, novellas, or other lengthy works of authorship. Such works are more likely to require significant time to create and do not lend themselves to a rapid and continuous publication schedule. Indeed, it seems unlikely that even a prolific author would be able to write, edit, and publish 50 “long-form” works within a three-month period.

If a particular work appears to be less than 100 words, the examiner may perform a word count, and if it falls below the 100-word threshold, the examiner may refuse registration for the group. Similarly, the examiner will refuse registration for the group if any work is found to exceed the 17,500-word limit.

A work will be considered an “online” literary work if it was first published on the internet. This requirement may be satisfied, for example, if copies of the work were first distributed to the public as part of a website or online platform.²⁸ Likewise, a work may be eligible for this option if copies were simultaneously published both on the internet and in a physical form. By contrast, a work would not be eligible for GRTX if

Distractions, GRIFFIN PAUL JACKSON (July 25, 2013), <https://griffinpauljackson.com/2013/07/25/book-word-counts/>; Lawrence J. Epstein, *Word Counts in Novels*, THE BEST AMERICAN POETRY: BLOG (Mar. 20, 2016), https://blog.bestamericanpoetry.com/the_best_american_poetry/2016/03/word-counts-in-novels-by-lawrence-j-epstein.html.

²⁶ Works of this length include Ray Bradbury’s *Fahrenheit 451*, F. Scott Fitzgerald’s *The Great Gatsby*, and Kurt Vonnegut’s *Slaughterhouse-Five*. *Id.*

²⁷ See Petition at 4.

²⁸ Because each work must be published “as part” of a website or online platform, the website or platform itself would not be eligible for this option. The Office intends to address website registrations in a separate Federal Register notice. See 83 FR 52336, 52337 (Oct. 17, 2018). Similarly, the Office intends to address publication with respect to the internet, for purposes of registration, in a separate proceeding.

copies have been distributed solely in a physical form, or if copies were first published in a physical form and then subsequently published online.

2. Number of Works That May Be Included in the Group

Under the proposed rule, an applicant will be allowed to include up to 50 literary works in each submission. The examiner will review each individual work for copyrightable authorship, and if the claim is approved, the registration will cover each work on a separate basis. If an applicant submits more than 50 works, the examiner may accept the first 50 works listed in the application or the examiner may refuse registration for the group.

As discussed below, applicants will be required to submit their claims through the existing registration system. The Office does not currently have the ability to charge differential prices based on the number of works in the group or the complexity of the claim. Given the technical limitations of the current system and the modest filing fee for this option, the Office must impose some limit on the total number of works that may be included in each claim, to manage the administrative burden that this option will impose on the Literary Division. After consulting with the Petitioners, the Office has determined that a limit of 50 works represents an appropriate balance between the interests of the writers and the administrative capabilities of the Office.²⁹ While each application is limited to 50 works, there is no limit as to how many applications can be submitted.

3. Title Information

²⁹ The Office will not accept claims involving a compilation, collective work, or database, because they often contain multiple works of authorship. Likewise, this option may not be used to register podcasts or audiobooks, because they contain two works (namely, a sound recording and the literary work embodied in that recording). These types of works also take more time to examine than traditional literary works, because each recording must be opened, buffered, and played to determine if it is eligible for registration.

The applicant will be required to provide a title for each work in the group, and a title for the group as a whole. The group title will be used to identify the registration in the online public record. The Office will accept any title that reasonably identifies the group. For example, the applicant may provide a title that describes the general subject matter of the works, such as “Poems, essays, and other reflections on Czech culture and cuisine,” or a title that includes the author’s name, type of works, and publication dates, such as “Drew McAlister’s Facebook Posts May through July 2018.” In all cases, the applicant will be required to append the term “GRTX” to the beginning of the group title, so that the Office can identify the claim and assign it to an appropriate member of the Literary Division.

4. Author and Claimant

Under the proposed rule, all of the works must be created by the same individual. Applicants will not be allowed to submit groups of works created by different authors (such as 25 essays by Carlos Martinez and 25 poems by Rena Martinez). Likewise, the Office will not accept applications claiming that two or more authors jointly created one or more of the works in the group. We would like to hear from commenters as to whether they anticipate any issues with this proposed limitation.

The new group registration option is intended to benefit individual writers who publish their works on the internet, but do not have the time or resources to register their works with the Office. This is less of a concern for corporate authors or authors who are

hired to create a work for another party. Therefore, the proposed rule expressly states that works made for hire cannot be registered with GRTX.³⁰

The proposed rule states that in all cases, the author must be named as the copyright claimant, even if a different party actually owns the copyright in each work. If the names provided in the author and claimant fields do not match each other, the examiner may remove the claimant's name and replace it with the author's name or the examiner may simply refuse registration. This will improve the efficiency of the examination process by allowing the Office to focus on the copyrightability of each work. It is also consistent with the basic principle that an author may always be named as the copyright claimant, even if she does not own any of the exclusive rights when the claim is submitted.³¹ *See Compendium* sec. 619.7 (citing 42 FR 48944, 48945 (Sept. 26, 1977)). We would like to hear from commenters as to whether they anticipate any issues with this proposed limitation.

5. Publication Information

As mentioned above, an applicant will be allowed to register a group of short literary works if the works were first published as part of a website or online platform. The works may be published on the same site or different sites, but they must be published within a three-calendar-month period.³²

³⁰ In this respect, the proposed rule is similar to the statutory and regulatory provisions that govern the group registration option for contributions to periodicals. *See* 17 U.S.C. 408(c)(3); 37 C.F.R. 202.4(g)(1), (3).

³¹ If the author transferred the copyright to another person or entity, the copyright owner may add that information to the public record by recording the bill of sale, exclusive license, or other document that identifies the current owner of each work.

³² In this respect, the proposed rule is similar to the regulations that govern the group registration options for automated databases, serials, and secure test items. *See* 37 C.F.R. 202.3(b)(5)(i)(F), 202.4(f)(1)(v), 202.13(d)(4).

If the works were published on the same date, the applicant should provide that date in the application. If the works were published on different dates, the applicant should identify the first date that the works were published; the Office will assume that the rest of the works were published on that date or within three months thereafter. Claims with a range of publication dates outside of a three-calendar-month period will be refused, and if any works are later determined to be published outside of the three-month calendar period the registration may be cancelled. *See* 37 CFR 202.4(l), (m).

The GRTX group option may only be used to register published works. This option cannot be used to register a group of unpublished literary works.³³ Likewise, applicants will not be allowed to combine published and unpublished works in the same claim. The Copyright Act requires applicants to separately identify published and unpublished works for purposes of registration, and this requirement cannot be changed without amending the law.³⁴

B. Application Requirements

Ordinarily, when the Office creates a new group registration option, it develops a corresponding application form to collect the information needed for that type of claim.³⁵ But the Office is beginning to work on the technical requirements for its next-generation registration system, and it does not intend to conduct any further development on the

³³ The Office recently announced that it intends to create a new group registration option for unpublished works, which will be known as “GRUW.” The Office also intends to release a new application form that will be specifically designed for these types of claims. *See* 82 FR 47415 (Oct. 12, 2017). The Office expects to issue a final rule in the GRUW rulemaking before the proposed rule on GRTX goes into effect. If an applicant attempts to register a group of unpublished works under GRTX, the Office will instruct the applicant to resubmit the claim using the designated form for GRUW, which will require an additional filing fee and result in a later effective date of registration.

³⁴ 17 U.S.C. 409(8).

³⁵ *See, e.g.*, 37 CFR 202.4(d)(2), (e)(5), (f)(2), (g)(6), (h)(8), (i)(8).

current system. In the interim, claims submitted under a new group registration option for short online literary works will need to be adapted to fit within the registration system as it currently exists.

Under the proposed rule, applicants will be required to submit their claims through the electronic registration system and they will be required to use the Standard Application designated for a “Literary Work.”³⁶ Further instructions on how to complete this application will be provided by the Office through traditional avenues, including its website, circulars, or Chapter 1100 of the *Compendium of U.S. Copyright Office Practices*. Recently the Office amended its regulations to require other group registration claims to be filed electronically, and the rationales requiring electronic submission of applications provided in those rulemakings apply equally here.³⁷ Moreover, GRTX may only be used to register literary works that have been published as part of a website or online platform. It is reasonable to assume that individuals who create and publish these types of works will have access to the internet and will be capable of using the electronic registration system to register their claims.³⁸

³⁶ As the label suggests, this application is designed for registering one literary work, rather than a group of related works.

³⁷ See, e.g., 82 FR 29410, 29410–11 (June 29, 2017) (final rule for contributions to periodicals explaining policy considerations supporting online-only registration); 82 FR 51369, 51374 (Nov. 6, 2017) (proposed rule for group newspapers); 83 FR 22896, 22899–900 (May 17, 2018) (proposed rule for group serials); 83 FR 22902, 22905 (May 17, 2018) (proposed rule for group newsletters).

³⁸ Likewise, the online-filing requirement will apply to the “supplementary registration” procedure, which may be used to correct or amplify the information in an existing registration. The Office has announced that if it moves “registrations for other classes of works into the electronic registration system,” the procedure for correcting or amplifying those registrations would “be subject to this same [online filing] requirement.” 81 FR 86656, 86658 (Dec. 1, 2016). Thus, if an applicant needs to correct or amplify the information in a registration for a group of short online literary works, that request will need to be submitted through the electronic registration system, instead of using a paper form. See 37 CFR 202.6(e)(1).

The Office will not accept claims submitted on a paper application. If an applicant attempts to use a paper form, the Office will refuse registration and instruct the applicant to resubmit the claim on the Standard Application, which will require a new filing fee and result in a later effective date of registration. But as with the other rules mentioned above,³⁹ the proposed rule would allow the Office to waive this online filing requirement in exceptional cases. If a particular author does not have internet access or is unable to use the Standard Application, the applicant could request a waiver in writing. The Office would review each request and would make appropriate accommodations for applicants who receive an approved waiver. To be sure, since this group registration option involves works that were necessarily published online, the Office expects there to be few, if any, exceptional cases necessitating waiver of this requirement.

The applicant must submit a sequentially numbered list containing a title/file name for each work in the group. The list must also include the publication date and word count for each work. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (*e.g.*, “Title Of Group Case Number 16283927239.xls”).

C. Deposit Requirements

Under the proposed rule, applicants will be required to submit one complete copy of each work in the group. The copies must be uploaded to the electronic registration system in a digital file, each file must be submitted in one of the acceptable file formats

³⁹ See, *e.g.*, 37 CFR 202.4(g)(9), (h)(11), (i)(11), 202.6(e)(7).

listed on the Office's website, such as PDF, and all of the files must be submitted in the same format.⁴⁰ Because this option may only be used to register works that have been published online, it is reasonable to assume that authors will be able to upload their works to the electronic system. Thus, the Office generally will not accept physical copies, such as print-outs, or digital copies that have been saved onto an electronic storage device, such as a disc or thumb drive.⁴¹

The copies must be submitted in an orderly manner. A submission will be considered "orderly" if the applicant uploads each work in a separate digital file. The Office will not accept multiple works within the same digital file because of the burden on the examiner in distinguishing one work from the next. The file name for each work must match the corresponding title entered on the application so that the examiner can easily verify that the correct works were uploaded. The upload should contain no more than 50 files representing 50 complete works. If more than 50 files are uploaded, the examiner may refuse registration for the group.

D. Filing Fee

The filing fee for this option will be \$55, which is the fee that currently applies to any claim submitted on the Standard Application. The Office recently issued a proposal to increase this fee from \$55 to \$75.⁴² If that proposal is adopted, the new fee will apply to any claim submitted on the Standard Application, including claims involving short online literary works. As mentioned above, the Office does not have the ability to charge

⁴⁰ The list of acceptable formats is available at <http://copyright.gov/eco/help-file-types.html>.

⁴¹ If an applicant is unable to upload a particular work to the system, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d)(1)(iii)-(iv). The Office will consider these requests on a case-by-case basis. *See Compendium* sec. 1508.8.

⁴² 83 FR 25054, 24057 (May 24, 2018).

differential prices when multiple works are submitted on the Standard Application.

However, the Office will consider this issue as it begins to develop the technical and legal requirements for its next-generation registration system.⁴³

E. The Scope of a Group Registration

As mentioned above, the Office will review each work to determine if it contains a sufficient amount of original, creative authorship. If the legal and formal requirements have been met, the examiner will register the claim and will add an annotation to the certificate indicating that the works were registered in accordance with the eligibility requirements for GRTX.⁴⁴

Under the proposed rule, a group registration will cover each work in the group and each work will be considered to be registered as a separate work.⁴⁵ Thus, if any of the works are subsequently infringed, the copyright owner should be entitled to seek a separate award of statutory damages for each individual work.⁴⁶ By contrast, the group itself is merely an administrative classification created solely for the purpose of registering multiple literary works with one application and one filing fee. Therefore, claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application, and the group will not be considered a compilation or a collective work for purposes of sections 101, 103(b), or 504(c)(1) of the Copyright Act.

IV. Conclusion

⁴³ See 83 FR 52336, 52339 (Oct. 17, 2018).

⁴⁴ If the examiner determines that one or more of the works is not copyrightable, the examiner will require the applicant to exclude that work from the claim. If the applicant disagrees with that assessment, the applicant may resubmit that work on an individual basis (which will require a new application, deposit, and filing fee) and then appeal the subsequent refusal.

⁴⁵ See 37 CFR 202.4(n).

⁴⁶ See 17 U.S.C. 504(c)(1) (authorizing a separate award of statutory damages “with respect to any one work”).

The proposed rule will encourage broader participation in the registration system by establishing a new group registration option for individual writers who publish their works on the internet. The Office invites public comments on this proposal.

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List of Subjects in 37 CFR Part 202

Copyright.

Proposed Regulation

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

2. Amend § 202.4 as follows:

a. Add paragraph (j).

b. In paragraph (n) remove “paragraph (g), (h), (i), or (k)” and add in their place “paragraphs (g) through (k)”.

The addition reads as follows:

§ 202.4 Group Registration.

* * * * *

(j) *Group registration of short online literary works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of literary

works may be registered in Class TX with one application, the required deposit, and the filing fee required by § 201.3(c) if the following conditions are met:

(1) The group may include up to 50 short online literary works. For purposes of this section, a *short online literary work* is a work consisting of text that contains at least 100 words and no more than 17,500 words, such as a poem, short story, article, essay, column, blog entry, or social media post. The work must be published as part of a website or online platform, including online newspapers, social media websites, and social networking platforms. The group may not include computer programs, audiobooks, podcasts, or emails. Claims in any form of authorship other than “text” or claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(2) All of the works must be published within a three-calendar-month period, and the application must identify the earliest date that the works were published.

(3) All the works must be created by the same individual and that individual must be named as the copyright claimant for each work in the group.

(4) The works must not be works made for hire and must not be works of joint authorship.

(5) The applicant must provide a title for each work and a title for the group as a whole, and must append the term “GRTX” to the beginning of the group title.

(6) The applicant must complete and submit the Standard Application designated for a “Literary Work.” The application may be submitted by any of the parties listed in § 202.3(c)(1).

(7) The applicant must submit one complete copy of each work. The works must be assembled in an orderly form with each work in a separate digital file, they all must be

submitted in one of the electronic formats approved by the Office, and they must be uploaded to the electronic registration system in no more than 50 files and representing no more than 50 complete works. The file name for each work must match the title as submitted on the application. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(8) The applicant must submit a sequentially numbered list containing a title/file name for each work in the group. The list must also include the publication date and word count for each work. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (*e.g.*, “Title Of Group Case Number 16283927239.xls”).

(9) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (j)(6) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

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Dated: December 17, 2018.

Regan A. Smith,
General Counsel and
Associate Register of Copyrights

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